

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

v.

Criminal No. 2:19-cr-47

AGHEE WILLIAM SMITH, II,

Defendant.

**DEFENDANT AGHEE WILLIAM SMITH'S MOTION
FOR A STATUS CONFERENCE**

Comes now the defendant, Aghee William Smith, II, by counsel, and hereby moves for a status conference at the Court's earliest convenience. All co-defendants, through their respective counsel, concur with this motion. The government does not object to the request for a status conference, though reserves the right to challenge the points of support below. In support of this motion, defendant represents as follows:

Summary of Relevant Procedural History

1. Mr. Smith and his co-defendants entered pleas of not guilty to the 19-count indictment on May 1, 2019, waived their rights under the Speedy Trial Act, and the Court made the appropriate findings and rulings regarding the setting of the trial date beyond the Speedy Trial cut-off date. ECF Nos. 42, 46, 49, 51 and 54. In November 2019, the Court joined Mr. Smith's case (the *Maerki* case) with *Unites States v. Daryl Bank, et al.*, 2:17cr126 (E.D. Va.). See ECF No. 85. Thus, currently there are eight defendants that are to be tried together.

2. Mr. Smith and all of his co-defendants, except Mr. Maerki, are on bond and have complied with their conditions of release.

3. On May 15, 2020, the Court granted the defendants' joint motion to continue the trial that was previously scheduled for July 7, 2020. See ECF Nos. 118, 119, 121. The Court thereafter scheduled the trial to begin on November 3, 2020. See 5/26/2020 docket entry. The trial was

continued in large part due to the nationwide COVID-19 pandemic, which affected the defense lawyers' preparation of the case, impacted their ability to investigate and meet with their respective clients and witnesses, and of course posed health dangers if the trial was to proceed as scheduled in July. Trial is estimated to last 6 weeks.

Need for a Status Conference

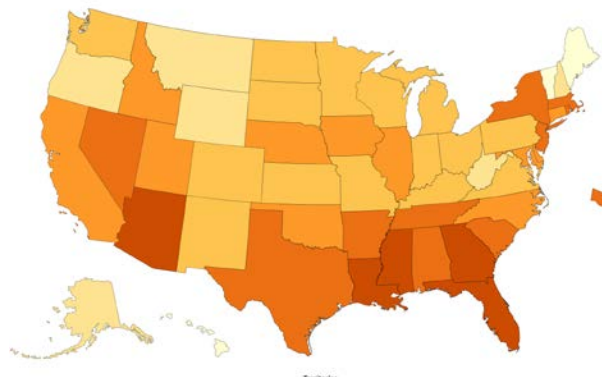
4. COVID-19 has greatly impacted court operations; not just here but nationwide. Due to the pandemic and COVID-19, defense counsel have concerns as to whether or not the trial of this case will start on November 3, 2020. In addition to preparing for trial, there are logistical issues that will require action by defense counsel in the very near future if trial is to proceed as currently scheduled.

5. Most of the defendants live outside of Virginia, as do most of the witnesses in the case. Mr. Smith and defendant Barnett, for example, both live in the Sacramento, California area, as do most of the alleged victims who invested through them in Dental Support Plus Franchise and in Janus Spectrum. Defendant Sellers lives in Idaho, as do most of his investors. Defendants Alcorn and Coffin live in Arizona, and many investors and witnesses are located there as well. Defense counsel need to travel to these other states to meet with their respective clients and to interview witnesses. If the trial is to start as scheduled, defense counsel will need to make travel arrangements for travel in September and October. Moreover, defense counsel need to prepare and file the appropriate motions for their respective clients, as well as witnesses, to travel here at the Marshal's and government's expense. Further, arrangements will have to be made for the defendants' (and potentially – witnesses') lodging while they are here for the length of the trial. Because of the expected length of the trial and the number of defendants, this may present some logistical issues for defense counsel and the Marshal's office.

6. In addition to arranging travel and lodging for the defendants and witnesses, the COVID-19 pandemic presents health concerns when traveling. Traveling to other states, (especially to or from Sacramento, California) is less than ideal at this time and the foreseeable future. According to the Center for Disease and Control (“CDC”):

Air travel requires spending time in security lines and airport terminals, which can bring you in close contact with other people and frequently touched surfaces. Most viruses and other germs do not spread easily on flights because of how air circulates and is filtered on airplanes. However, social distancing is difficult on crowded flights, and sitting within 6 feet of others, sometimes for hours, may increase your risk of getting COVID-19.¹

The CDC also warns: “The more cases at your destination, the more likely you are to get infected during travel and spread the virus to others when you return.”² The CDC includes California, Arizona, and Idaho as a higher-risk destination than Virginia³:



Since symptoms may not appear for up to 14 days after exposure, travelers will not know which fellow travelers have been infected; in fact, some show no symptoms at all.⁴ Thus, the defendants (and/or witnesses) may travel here and not be symptomatic until after the trial starts.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>

² *Id.*

³ <https://www.cdc.gov/covid-data-tracker/index.html#cases> (cases per 100,000)

⁴ <https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963>

7. Aside from the risks from travel and the associated dangers at this time, many of the defendants are in high-risk categories per the CDC.⁵ All but Mr. Sellers are over 65 years old – specifically, Mr. Maerki, Mr. Alcorn, and Ms. Coffin are in their mid-to-late 70s; Mr. Barnett and Mr. Smith are in their mid-to-late 60s. Mr. Maerki, amongst others, also suffers from substantial health problems further increasing his risk. Meeting in person with high-risk clients is dangerous for their physical health and the health of their spouses. Upon information and belief, some of the expected witnesses are of advanced age and may well be in a high-risk category for COVID-19.

8. Defense counsel also have concerns for the trial itself due to the pandemic and COVID-19. This case will require a jury pool of dozens of local citizens to find a jury who can be empaneled for 6 weeks. There are also eight defendants, nine attorneys plus paralegals along with multiple marshals and court personnel. The jury will need to listen to and observe the evidence for weeks. Given the age and health risks of the defendants, and the unknown risk factors for the jurors and their families, this could at a minimum lead to a mistrial or hospitalization should someone involved become symptomatic or sick during the trial.

WHEREFORE, defendant respectfully moves for a status conference so these issues, as well as any related issues, can be discussed and considered.

Respectfully submitted,

AGHEE WILLIAM SMITH, II

By: _____/s/_____
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Supervisory Ass't Federal Public Defender
Attorney for Aghee William Smith, II

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

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CERTIFICATE OF SERVICE

I certify that on this 22nd day of August 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification (NEF) to:

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